

INTERGOVERNMENTAL AGREEMENT
Between
Virginia Department of Agriculture and Consumer Services
and
Fauquier County

This INTERGOVERNMENTAL AGREEMENT is entered into this 26th day of February, 2008, in the City of Richmond, Virginia, between the Virginia Department of Agriculture and Consumer Services ("VDACS") and Fauquier County (collectively, "the parties") to provide mutually advantageous terms for cooperation between VDACS and Fauquier County to implement VDACS' contribution of funds during the fiscal year ending June 30, 2008 in support of Fauquier County's purchase of agricultural conservation easements.

WHEREAS, the General Assembly, by Chapter 847 of the 2007 Acts of Assembly, has appropriated \$4.25 million to VDACS for the establishment of a state fund to match local government purchase of development rights program funds for the preservation of working farms and forest lands; and,

WHEREAS, § 3.1-18.10 of the Code of Virginia authorizes VDACS' Office of Farmland Preservation to develop methods and sources of revenue for allocating funds to localities to purchase agricultural conservation easements; and,

WHEREAS, for all purposes of this INTERGOVERNMENTAL AGREEMENT, the term "agricultural conservation easement" shall mean a negative easement that has the primary conservation purpose of preserving working farm and/or forest land; and,

WHEREAS, the Fauquier County Board of Supervisors has enacted an ordinance or passed a resolution that: authorizes, in accordance with Title 10.1, Chapter 17 of the Code of Virginia ("the Open-Space Land Act") and other applicable law, Fauquier County to purchase agricultural conservation easements from landowners (each hereinafter called "Grantor"); sets forth a clear, consistent, and equitable administrative process governing such purchases; and outlines the goals and purposes of Fauquier County's farmland preservation program; and,

WHEREAS, Fauquier County has agreed to maintain a public outreach program designed to educate various stakeholders in Fauquier County—including farmers, landowners, public officials, and the non-farming public—about Fauquier County's initiatives to preserve working farms and forest lands; and,

WHEREAS, Fauquier County has agreed to establish a transparent and replicable process for valuation of agricultural conservation easements; and,

WHEREAS, the purchase of agricultural conservation easements is one component of Fauquier County's broader farmland preservation program; and,

WHEREAS, Fauquier County has agreed to use a deed of easement that is sufficiently flexible to allow for future agricultural production in purchases of agricultural conservation easements for which Fauquier County uses funds contributed to it by VDACS; and,

WHEREAS, Fauquier County has agreed to establish a clear strategy for monitoring and enforcing the terms of the agricultural conservation easements that Fauquier County purchases; and,

WHEREAS, Fauquier County has agreed to establish a process that Fauquier County will use to evaluate the effectiveness of its farmland preservation program, including a protocol for making changes to Fauquier County's agricultural conservation efforts based on such evaluations; and,

WHEREAS, VDACS, in reliance on the veracity of the foregoing recitals, certifies Fauquier County is eligible to receive contributions of funds from VDACS in reimbursement for certain costs Fauquier County incurs in the course of purchasing agricultural conservation easements; and,

WHEREAS, Fauquier County, and the agents and employees of Fauquier County, in the performance of this INTERGOVERNMENTAL AGREEMENT, are acting on behalf of Fauquier County, and not as officers or employees or agents of the Commonwealth of Virginia;

NOW, THEREFORE, VDACS and Fauquier County agree their respective responsibilities, pursuant to this INTERGOVERNMENTAL AGREEMENT, shall be defined as follows:

1. VDACS Responsibilities

- a. VDACS shall, within thirty (30) days of the date of execution of this INTERGOVERNMENTAL AGREEMENT, restrict \$403,219.75 (hereinafter "the allocation amount") in an account, from which VDACS shall withdraw funds only to pay contributions of funds that Fauquier County is eligible to receive pursuant to this INTERGOVERNMENTAL AGREEMENT, except that upon the expiration of two (2) years from the date of this INTERGOVERNMENTAL AGREEMENT, or immediately upon Fauquier County's failure to perform any of its obligations under the terms of this INTERGOVERNMENTAL AGREEMENT, VDACS shall have the right to withdraw any funds then remaining in such account and the right to redirect those funds to other localities that VDACS certifies as being eligible to receive matching funds and that enter into an intergovernmental agreement with VDACS to govern the distribution of matching funds for the purchase of agricultural conservation easements.
- b. Upon Fauquier County's recordation of a deed evidencing Fauquier County's purchase of an agricultural conservation easement in the circuit court of the city or county where the Grantor's land is located and Fauquier County's submission to VDACS of a completed claim for reimbursement, on a form prescribed by VDACS, together with the supporting documentation required under paragraph 2(e) of this INTERGOVERNMENTAL AGREEMENT, VDACS shall reimburse Fauquier County fifty percent (50%) of the reimbursable costs that Fauquier County actually incurred in the course of purchasing that agricultural conservation easement, limited to that portion of the allocation amount remaining in the account maintained by VDACS pursuant to paragraph 1(a) of this INTERGOVERNMENTAL AGREEMENT. VDACS may make alternative arrangements for the distribution of funds pursuant to this INTERGOVERNMENTAL AGREEMENT, provided Fauquier County presents a written request for such alternative arrangement to the Commissioner of VDACS or the Commissioner's designated agent (referred collectively hereinafter as "the Grant Manager") prior to incurring any expense for which Fauquier County seeks a distribution of funds under the proposed alternative arrangement.

For purposes of this INTERGOVERNMENTAL AGREEMENT, "reimbursable costs" include:

1. The purchase price of the agricultural conservation easement, at present value, including any portion that Fauquier County will pay over time pursuant to an installment purchase agreement;
2. The cost of title insurance;
3. The cost of one appraisal of the land upon which Fauquier County purchases an agricultural conservation easement;

4. The cost of one survey of the physical boundaries of the land upon which Fauquier County purchases an agricultural conservation easement, but not the cost of producing a baseline report of the conditions existing on the land at the time of the conveyance of the agricultural conservation easement;
 5. Reasonable attorney fees associated with the purchase of an agricultural conservation easement; and
 6. The cost of issuing public hearing notices associated with Fauquier County's purchase of an agricultural conservation easement that Fauquier County is required by law to issue.
- c. VDACS shall only be responsible for reimbursing Fauquier County under paragraph 1(b) of this INTERGOVERNMENTAL AGREEMENT for reimbursable costs that Fauquier County actually incurs in the course of purchasing an agricultural conservation easement when Fauquier County acquires, by such purchase, a deed of easement that, at a minimum, provides:
1. The primary conservation purpose of the easement conveyed by the deed of easement is the conservation of the land for agricultural and/or forestal uses.
 2. The Grantor and Fauquier County agree that the land subject to the agricultural conservation easement shall not be converted or diverted, as the Open-Space Land Act employs those terms, until and unless the Grant Manager, with the concurrence of Fauquier County or an assignee of Fauquier County's interest in the agricultural conservation easement, certifies that such conversion or diversion satisfies the requirements of the Open-Space Land Act.
 3. The Grantor and Fauquier County agree that, in the event of an extinguishment of the restrictions of the agricultural conservation easement that results in the receipt of monetary proceeds by Fauquier County or an assignee of Fauquier County's interest in an agricultural conservation easement in compensation for the loss of such property interest, VDACS shall be entitled to a share of those proceeds proportional to VDACS's contribution toward the total reimbursable cost of acquiring the agricultural conservation easement.
 4. If the Grantor conveys the agricultural conservation easement for less than its fair market value, the Grantor and Fauquier County mutually acknowledge that approval of the terms of this Deed of Easement by VDACS and/or its legal counsel does not constitute a warranty or other representation as to the Grantor's qualification for any exemption, deduction, or credit against the Grantor's liability for the payment of any taxes under any provision of federal or state law.
 5. All mortgagors and other holders of liens on the property subject to the restrictions contained in the deed of easement have subordinated their respective liens to the restrictions of the deed of easement acquired by Fauquier County. All such mortgagors and other holders of liens shall manifest their assent to the easement's priority over their respective liens by endorsing the deed of easement.

2. Fauquier County Responsibilities

- a. Fauquier County shall, within thirty (30) days of the date of execution of this INTERGOVERNMENTAL AGREEMENT, appropriate funds equal to the allocation amount for the purpose of purchasing agricultural conservation easements.
- b. Fauquier County shall use matching funds that VDACS contributes to Fauquier County, pursuant to this INTERGOVERNMENTAL AGREEMENT, only for the purpose of purchasing agricultural conservation easements that are perpetual and that have the primary conservation purpose of preserving working farm and forest lands.
- c. Within one (1) year from the date of this INTERGOVERNMENTAL AGREEMENT, and for each subsequent year in which the INTERGOVERNMENTAL AGREEMENT or a subsequent agreement is in force, Fauquier County shall submit to VDACS a progress report that:
 1. describes any properties that Fauquier County has identified as prospects for Fauquier County's purchase of agricultural conservation easements and the status of any negotiations for the purchase of such agricultural conservation easements;
 2. estimates the timeframes within which Fauquier County will execute contracts for any such purchases, close on such purchases, and request reimbursement of reimbursable costs for those purchases from VDACS;
 3. describes the measures Fauquier County has undertaken to develop and/or maintain a public outreach program designed to educate various stakeholders in Fauquier County's community—including farmers, landowners, public officials, and the non-farming public—about Fauquier County's agricultural conservation easement program and other initiatives to preserve working agricultural land;
 4. describes the measures Fauquier County has undertaken to develop and/or maintain a formal plan for stewardship and monitoring of the working agricultural land on which Fauquier County acquires agricultural conservation easements; and
 5. describes the measures Fauquier County has undertaken to develop and/or maintain a process that Fauquier County will use to evaluate the effectiveness of its program, including a protocol for making changes to Fauquier County's agricultural conservation efforts based on such evaluations
- d. For any purchase of agricultural conservation easements for which Fauquier County requests reimbursement from VDACS pursuant to this INTERGOVERNMENTAL AGREEMENT, Fauquier County shall obtain a policy of title insurance on its purchased interest that covers at least an amount equal to the amount for which Fauquier County requests reimbursement from VDACS.
- e. Prior to closing on a purchase of an agricultural conservation easement for which Fauquier County requests reimbursement from VDACS pursuant to this INTERGOVERNMENTAL AGREEMENT, Fauquier County shall submit, for review and approval by VDACS and its legal counsel, the following documentation:
 1. a fully executed contract for the sale of the agricultural conservation easement;
 2. any installment purchase agreement;

3. the deed of easement that the Grantor will deliver to Fauquier County at closing;
4. a title insurance commitment for a policy to insure the easement interest under contract indicating an amount of coverage at least equal to the amount of funds for which Fauquier County requests reimbursement from VDACS; and
5. an itemized list of all reimbursable costs that Fauquier County has or will, up to the time of closing, incur in the course of purchasing the agricultural conservation easement.

Fauquier County shall make whatever changes to the proposed deed of easement and/or the installment purchase agreement, where applicable, that VDACS and/or its legal counsel deem necessary to ensure compliance with applicable state law and the requirements and purposes of this INTERGOVERNMENTAL AGREEMENT.

Fauquier County may fulfill its obligation under this paragraph by submitting accurate and complete copies of all documents enumerated in this paragraph, provided that Fauquier County shall deliver or make available the original documents to VDACS for review at VDACS' request.

- f. Together with any claim for reimbursement pursuant to this INTERGOVERNMENTAL AGREEMENT that Fauquier County submits to VDACS, Fauquier County shall also submit the following supporting documentation:
 1. a copy of the recorded deed of easement that VDACS and/or its legal counsel approved prior to closing, showing the locality, deed book, page of recordation, and purchase price; and
 2. copies of invoices, bills of sale, and cancelled checks evidencing Fauquier County's incursion of reimbursable costs in the course of purchasing the agricultural conservation easement; and
 3. a copy of any executed installment purchase agreement related to the purchase; and
 4. a copy of any deed of trust related to the purchase.
- g. Fauquier County shall provide the Grant Manager immediate written notice of Fauquier County's receipt of any application or proposal for the conversion or diversion of the use of any land upon which Fauquier County or its assignee, where applicable, holds an agricultural conservation easement, for the purchase of which VDACS contributed funds pursuant to this INTERGOVERNMENTAL AGREEMENT.
- h. Fauquier County, or any assignee of Fauquier County's interest in an agricultural conservation easement for which Fauquier County receives a contribution from VDACS pursuant to this INTERGOVERNMENTAL AGREEMENT shall at all times enforce the terms of that easement. Fauquier County shall provide the Grant Manager immediate written notice of any actions, whether at law, in equity, or otherwise, taken by locality to enforce the terms of the easement or to abate, prevent, or enjoin any violation thereof by any party. Any failure by Fauquier County or such assignee to perform its enforcement responsibility shall constitute a breach of this INTERGOVERNMENTAL AGREEMENT, for which VDACS shall have a remedy by way of a civil action for specific performance of that enforcement responsibility; or, VDACS shall have the right and authority, at its option, to demand and receive from Fauquier County a portion of the full market value of the agricultural conservation easement at the time of the breach in proportion to the amount VDACS contributed to Fauquier County's purchase

of the agricultural conservation easement relative to the full market value of the agricultural conservation easement at the time of the purchase.

- i. For any purchase of an agricultural conservation easement for which Fauquier County requests reimbursement from VDACS pursuant to this INTERGOVERNMENTAL AGREEMENT, Fauquier County shall derive its valuation of the agricultural conservation easement according to the valuation methods prescribed by ordinance or resolution.

3. Recertification

This INTERGOVERNMENTAL AGREEMENT pertains exclusively to VDACS's contribution of funds that the General Assembly has appropriated to VDACS for the fiscal years ending June 30, 2007 and June 30, 2008. VDACS shall not contribute other funds in the future to Fauquier County except upon VDACS's recertification of Fauquier County's eligibility to receive such funds. VDACS may establish and communicate to Fauquier County certain benchmarks of program development that VDACS will impose upon Fauquier County as preconditions to Fauquier County's recertification for future contributions.

4. Governing Law

This INTERGOVERNMENTAL AGREEMENT is governed by and shall be interpreted in accordance with the laws of the Commonwealth of Virginia. In all actions undertaken pursuant to this INTERGOVERNMENTAL AGREEMENT, preferred venue shall be in the City of Richmond, Virginia, at the option of VDACS.

5. Assignment

Fauquier County shall not assign this INTERGOVERNMENTAL AGREEMENT, either in whole or in part, or any interest in an agricultural conservation easement for the purchase of which VDACS contributes funds pursuant to this INTERGOVERNMENTAL AGREEMENT, without the prior, written approval of the Grant Manager.

6. Modifications

The parties shall not amend this INTERGOVERNMENTAL AGREEMENT, except by their mutual, written consent.

7. Severability

In the event that any provision of this INTERGOVERNMENTAL AGREEMENT is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this INTERGOVERNMENTAL AGREEMENT have force and effect and shall not be affected thereby.

In witness, whereof, the parties hereto have executed this INTERGOVERNMENTAL AGREEMENT as of the day and year first written above.